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3 Employment Security Division (ESD)  
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7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9 JOHN MAHLER,  
10 Plaintiff,

11 vs.

**CASE NO.: 2:16-cv-02810-APG-VCF**

**MOTION TO STAY DISCOVERY**

12 BARBARA BIELECKI, NEVADA  
EMPLOYMENT SECURITY  
13 DIVISION, STATE OF NEVADA,  
RENEE OLSON, in her capacity as  
14 ADMINISTRATOR of the NEVADA  
EMPLOYMENT SECURITY  
15 DIVISION; KATIE JOHNSON, in her  
capacity as Chairwoman of the NEVADA  
16 EMPLOYMENT SECURITY DIVISION  
BOARD OF REVIEW, and DOES 1-10,  
17 Defendants.

18  
19 **COME NOW**, Defendants Renee Olson, Administrator, State of  
20 Nevada, Department of Employment, Training and Rehabilitation, Employment  
21 Security Division; Administrative Tribunal referee, Barbara Bielecki (Referee

1 Bielecki); and, Katie Johnson, Chairwoman of the Employment Security Division  
2 Board of Review (hereinafter, collectively, “ESD”), by and through Division  
3 Senior Legal Counsel, Laurie L. Trotter, Esq., and hereby move this Court to stay  
4 discovery in this matter pending its ruling on the Defendants’ Motion To Dismiss.  
5 This Motion seeks to stay discovery in the civil rights case commenced on  
6 December 6, 2016, when Plaintiff John Mahler (Mahler) filed his “Civil Rights  
7 Complaint Pursuant to 42 U.S.C. § 1983” (Complaint). This Motion is made and  
8 based on the accompanying Memorandum of Points and Authorities, as well as all  
9 papers and pleadings on file herein.

## 10 **MEMORANDUM OF POINTS AND AUTHORITIES**

### 11 **I. FACTS**

12 Mahler alleges in the instant civil rights complaint that on December  
13 7, 2014, about two (2) years before the commencement of this action, ESD  
14 Administrative Tribunal Referee Barbara Bielecki (Referee Bielecki) violated his  
15 due process rights. Referee Bielecki did so by ruling against him during the state  
16 administrative hearing that focused on his alleged right to unemployment benefits.

17 Mahler sought judicial review of Referee Bielecki’s decision in this  
18 state administrative matter and prevailed at the state district court level when the  
19 state district court, by way of an order entered on March 14, 2017, remanded the  
20 matter for a new hearing before a different ESD referee. This case remains  
21 pending at the ESD Administrative Tribunal level.

1           The instant case and the underlying state administrative case involve  
2 the same parties and stem from the same events. The federal due process rights  
3 issue is raised in both. ESD and Referee Bielecki moved to dismiss this case on  
4 March 17, 2017, raising issues of jurisdiction, immunity, statute of limitations.

## 5       **II.    ARGUMENT**

6           The purpose of Federal Rule of Civil Procedure 12(b)(6) is to enable  
7 defendants to challenge the legal sufficiency of a complaint without subjecting  
8 themselves to discovery. *Rutman Wine Co. v. E & J Gallo Winery*, 829 F.2d 729,  
9 738 (9th Cir.1987). The Ninth Circuit has held that discovery at the pleading stage  
10 is only appropriate where factual issues are raised by a Rule 12(b) motion. A  
11 pending Rule 12(b) motion to dismiss is sufficient cause for granting a protective  
12 order. *Wagh v. Metris Direct, Inc.*, 363 F .3d 821, 829 (9th Cir.2003), *overruled*  
13 *on other grounds*, *Odom v. Microsoft Corp.*, 486 F.3d 541, 551 (9th Cir.2007) (en  
14 banc). Dispositive motions which raise issues of jurisdiction or immunity are  
15 commonly situations in which federal courts determine that staying discovery  
16 pending a ruling on a dispositive motion is appropriate. *Wood v. McEwen*, 644  
17 F.2d 797, 801 (9th Cir.1981) (per curium). The United States Supreme Court has  
18 squarely held that until the threshold issue of immunity is resolved, discovery  
19 should not proceed. *Harlowe v. Fitzgerald*, 457 U.S. 800, 818 (1982). Immunity  
20 includes not only immunity from liability, but immunity from participating in a  
21 lawsuit.

1 While issues of jurisdiction and immunity are being determined,  
2 pretrial discovery should be avoided. *Mitchell v. Forsyth*, 472 U.S. 511, 526  
3 (1985). ESD's and Referee Bielecki's Motion to Dismiss, which raises issues of  
4 jurisdiction and immunity, is dispositive of the entire case. It can be decided  
5 without additional discovery.

6 **III. CONCLUSION**

7 Based on the foregoing, Defendants respectfully request that this  
8 Court stay discovery pending its ruling on ESD's and Referee Bielecki's Motion  
9 To Dismiss.

10 **DATED** this 17<sup>th</sup> day of March, 2017.

11 /s/ Laurie L. Trotter

12 LAURIE L. TROTTER, ESQ.

13 Nevada State Bar No. 8696

14 STATE OF NEVADA, DETR/ESD

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19 *Attorney for Defendants*

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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. Rule 5(b), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of the foregoing **MOTION TO STAY DISCOVERY**, together with a copy of the proposed **ORDER STAYING DISCOVERY** by placing the same within an envelope and depositing said envelope with the State of Nevada mail for postage and mailing from Carson City, Nevada, addressed for delivery as follows:

John Mahler  
8705 Prairie Hill Drive  
Las Vegas, NV 89134  
Plaintiff, pro se

**DATED** this 17<sup>th</sup> day of March, 2017.

/s/ Sheri C. Ihler  
SHERI C. IHLER

# **PROPOSED ORDER**

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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOHN MAHLER,

Plaintiff,

vs.

BARBARA BIELECKI, NEVADA  
EMPLOYMENT SECURITY  
DIVISION, STATE OF NEVADA,  
RENEE OLSON, in her capacity as  
ADMINISTRATOR of the NEVADA  
EMPLOYMENT SECURITY  
DIVISION; KATIE JOHNSON, in her  
capacity as Chairwoman of the NEVADA  
EMPLOYMENT SECURITY DIVISION  
BOARD OF REVIEW, and DOES 1-10,

Defendants.

**CASE NO.: 2:16-cv-02810-APG-VCF**

**ORDER STAYING DISCOVERY**

Plaintiff John Mahler's (Plaintiff) filed a "Civil Rights Complaint  
Pursuant to 42 U.S.C. § 1983" (Complaint) herein on December 6, 2016.

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1           On March 17, 2017, Defendants Renee Olson, Administrator, State of  
2 Nevada, Department of Employment, Training and Rehabilitation, Employment  
3 Security Division; ESD's Administrative Tribunal Referee, Barbara Bielecki  
4 (Referee Bielecki); and Katie Johnson, Chairwoman of the Employment Security  
5 Division Board of Review (collectively ESD) filed a Motion To Dismiss.

6           The purpose of Federal Rule of Civil Procedure 12(b)(6) is to enable  
7 defendants to challenge the legal sufficiency of a complaint without subjecting  
8 themselves to discovery. *Rutman Wine Co. v. E & J Gallo Winery*, 829 F.2d 729,  
9 738 (9th Cir.1987). Discovery at the pleading stage is only appropriate where  
10 factual issues are raised. A pending Rule 12(b) motion to dismiss is sufficient  
11 cause for granting a protective order. *Wagh v. Metris Direct, Inc.*, 363 F .3d 821,  
12 829 (9th Cir.2003), *overruled on other grounds*, *Odom v. Microsoft Corp.*, 486  
13 F.3d 541, 551 (9th Cir.2007) (en banc). Dispositive motions which raise issues of  
14 jurisdiction or immunity are commonly situations in which federal courts  
15 determine that staying discovery pending a ruling on a dispositive motion is  
16 appropriate. *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir.1981) (per curium).

17           Referee Bielecki's and ESD's Motion To Dismiss raises issues of  
18 jurisdiction and immunity and, if granted, would be dispositive of the entire case.

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1 It can be decided without discovery. Accordingly, a stay of discovery pending a  
2 ruling on ESD's and Referee Bielecki's motion to dismiss will not unduly  
3 prejudice any party or present a clear tactical disadvantage to the nonmoving party.

4 GOOD CAUSE APPEARING THEREFOR,

5 **IT IS HEREBY ORDERED** that discovery in this matter be, and the  
6 same hereby is, stayed pending a ruling on ESD's Referee Bielecki's motion to  
7 dismiss.

8 **DATED** this 18th day of April, 2017  
~~March~~



10 HONORABLE CAM FERENBACK ~~H~~  
11 UNITED STATES MAGISTRATE JUDGE

12  
13 This proposed order was prepared  
14 and submitted by:

15 /s/ Laurie L. Trotter

16 LAURIE L. TROTTER, ESQ.  
17 Nevada State Bar No. 8696  
18 STATE OF NEVADA, DETR/ESD  
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*Attorney for Defendants*

Under LR 7-2(d), the failure of an opposing party to  
file points and authorities in response to any motion,  
except a motion under Fed. R. Civ. P. 56 or a motion  
for attorney's fees, constitutes a consent to the granting  
of the motion. To date, no opposition has been filed.  
Accordingly, IT IS HEREBY ORDERED that the  
Motion to Stay Discovery is GRANTED.